

NEW JERSEY HAZARDOUS WASTE FACILITY SITING PROVISIONS

Topics

Administration

Local Community Needs and Involvement

Public Participation

Siting Restrictions and Prohibitions

Environmental Justice Considerations

Economic Criteria

Other Criteria

Relevant Statutes and Regulations:

- G 13:1E-49 through 13:1E-91 (The Major Hazardous Waste Facilities Siting Act)
- G 13:1E-6a2 (General enabling statutes)
- G 7:26-10.3 (Location Standards for New Hazardous Waste Facilities)
- G 7:26-13 (Siting Criteria for New Major Hazardous Waste Facilities)
- G 7:26-13A. (Hazardous Waste Facilities Siting Commission: Policies and Procedures)
- G 7:26-12.12 (Public Participation in the Permit Process)

<http://www.state.nj.us/dep/dshw/resource/rules.htm> has the "7:26" regulations

Other Relevant State Documents:

1. Hazardous Waste Facilities Siting Commission. n.d. "How Facilities are Sited in New Jersey," P.O. Box 406, Trenton, New Jersey
2. New Jersey Hazardous Waste Facilities Siting Commission. n.d. "The Municipal Guide to Siting Hazardous Waste Facilities," CN406, Trenton, New Jersey.

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Web Address for the State Environmental Agency

G <http://www.state.nj.us/dep/>

Affected Facilities:

G The Siting Act applies to only the following:

- !** Major hazardous waste facilities, i.e., commercial facilities which receive wastes from off-site that have a capacity to treat, store, or dispose of more than 250,000 gallons of hazardous waste; and
- !** expansions to the above facilities which increase capacity by 50% or more.

G The hazardous waste location standards for new hazardous waste facilities apply to:

- !** commercial facilities with capacity to treat, store or dispose of 250,000 gallons or less of hazardous waste; and
- !** facilities (including facilities of > 250,000 gallons) that handle only wastes generated on-site.

G Expansions to facilities that are not "major hazardous waste facilities" and expansions, to major hazardous waste facilities, that increase the capacity by less than 50% are covered by the regular permitting procedures, rather than by the Siting Act.

Definitions of Facility Types:

G Siting Act Definitions:

a. "Hazardous waste facility" means:

- !** Any area, plant or other facility for the treatment, storage or disposal of hazardous wastes, including loading and transportation facilities or equipment used in connection with processing of hazardous wastes.

b. "Major hazardous waste facility" means:

- !** any commercial hazardous waste facility that has a total capacity to treat, store, or dispose of more than 250,000 gallons of hazardous waste, or the equivalent thereof.
- !** excepted are major hazardous waste facilities that recycle or re-refine only hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper.

c. "Existing major hazardous waste facility means:

- !** any major hazardous waste facility that was legally in operation or upon which construction had legally commenced prior to the effective date of the Siting Act (September 10, 1981).

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d. "New major hazardous waste facility" means:

! any major hazardous waste facility other than an existing facility.

e. "Commercial hazardous waste facility" means:

! any hazardous waste facility which accepts hazardous waste from more than one generator for storage, treatment or disposal at a site other than the site where the hazardous waste was generated.

G Definitions under New Jersey's Hazardous Waste Regulations:

a. "Hazardous waste facility" means:

! all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more secure landfills, surface impoundments, resource recovery facility, processing operation, incinerator, transfer station, waste treatment facility or storage facility).

b. "Existing hazardous waste facility" means:

! a hazardous waste facility which was in operation, or for which construction commenced, on or before November 19, 1980.

c. "New hazardous waste facility" means:

! a facility that began operation, or for which construction commenced, after November 19, 1980.

e. There are no definitions for "major hazardous waste facility" or "commercial hazardous waste facility."

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| ADMINISTRATION / RESPONSIBILITIES | | | |
| New Jersey Department of Environmental Protection (NJDEP) | PA | 7:26G | The NJDEP is responsible through the permitting process to ensure that all new facilities meet the siting requirements at 7:26-10.3. |
| | | | Relative to major hazardous waste facilities, NJDEP is responsible for the following: |
| | PPA | [13:1E-57] | ! By September 10, 1982, in consultation with the Council, to have prepared, adopted and transmitted to the Commission the criteria for the siting of new major hazardous waste facilities. These criteria are codified at 7:26 Subchapter 13. |
| | PPA | [13:1E-58e.] | ! Provide or prepare any data or information, as directed by the Commission, which the Commission deems necessary for the performance of its responsibilities relative to the Major Hazardous Waste Facilities Siting Act. |
| | PA | 7:26G; [13:1E-87] | ! Review and approve any amendment to a major commercial hazardous waste facility's permit or engineering design which would result in an increase of 50 % or more of the capacity of that facility, following procedures of 13:1E-60. |
| | PA | [13:1E-60b.] | ! Review all applications for registration statements and engineering designs for new major hazardous waste facilities in consultation with the Council. The review shall include the evaluation of an environmental and health impact statement, which shall be prepared by the Commission at the applicant's expense. No approval will be granted unless NJDEP finds: <ul style="list-style-type: none"> - The environmental and health impact statement shows that the location and design of the proposed facility will pose no significant threat to human health or to the environment if properly managed in accordance with all relevant Federal and State Laws and rules and regulations adopted pursuant thereto; - The proposed facility would be operated by the proposed operator on a site designated by the Commission for that particular type of major hazardous waste facility. |

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| NJDEP (continued) | PA | <i>[13:1E-60c.(5)]</i> | ! NJDEP rejects the application or grant tentative approval within 8 months of receiving the application for the registration statement and engineering design. The tentative approval establishes the design and operating conditions for the proposed major hazardous waste facility, monitoring thereof, and any other conditions required under State rules and regulations. |
| | PA | <i>[13:1E-60c.(9)]</i> | ! Within 60 days of the receipt of the administrative law judge's recommendations relative to the registration statement and engineering design application, NJDEP shall affirm, conditionally affirm or reject the recommendations and grant final approval to or deny the application. Such approval or denial of the application is considered final agency action and is subject only to judicial review as provided by the Rules of Court. If NJDEP fails to act upon the recommendations, the failure constitutes NJDEP affirmance of the recommendations. |
| | PPA PA | <i>[13:1E-60e.]</i> | ! NJDEP may, upon the request of the owner or operator and after a public hearing, exempt a major hazardous waste facility below a certain size or of a particular type from being considered a major hazardous waste facility for the purposes of <i>13:1E-60</i> , provided that such exemption is consistent with the eligibility standards contained in rules and regulations adopted by the Commission. |

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| Hazardous Waste Facilities Siting Commission (the Commission): membership and structure | NA | [13:1E-52] | <p>The Commission is responsible for the siting of facilities affected by the Major Hazardous Waste Facilities Siting Act.</p> <p>! Allocated within NJDEP, but independent of any supervision or control by NJDEP or by the commissioner or any officer or employee thereof.</p> <p>! Consists of nine members. Two more voting members are appointed to the commission to consider the recommendations of an administrative law judge pursuant to 13:1E-59(a).</p> <p>! Nine members appointed by the Governor with the advice and consent of the Senate for terms of three years. Additional two members: 1) one is appointed by the governing body of the county in which the proposed major hazardous waste facility is located and 2) the other is appointed by the governing body of the municipality in which the site will be located. If proposed site is in more than one county or municipality, then a member can be appointed by each county/municipality affected, but there are only two additional votes--one shared by the counties and one shared by the municipalities.</p> <p>! Of the nine members</p> <ul style="list-style-type: none"> - three must be county or municipal elected or appointed officials - three must be employed by an industrial firm - three must be representatives of environmental or public interest groups |
| The Commission: powers | NA | [13:1E-53] | <p>! Employs an executive director, consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgement of the Commission to carry out the purposes of this act and fixes and pays their compensation from funds available to the Commission without regard to the Civil Service provisions.</p> <p>! Holds public meetings or hearings within the State on any matter related to the need for, or the siting of, major hazardous waste facilities.</p> |

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| The Commission: duties relative to preparation of the Major Hazardous Waste Facilities Plan (the Plan) | PPA | [13:1E-58] | <p>! Develops the major hazardous waste facilities plan and revises and updates this plan every three years (first one developed by September 10, 1982). Updates can be more frequent if the Commission deems it necessary. This plan includes:</p> <ul style="list-style-type: none"> - An inventory and appraisal, including the identity, location and life expectancy of all hazardous waste facilities located within New Jersey, and the identity of every person engaging in hazardous waste collection, treatment, storage or disposal in the State; - A current inventory of the sources, composition and quantity of the hazardous waste generated within the State; - Projections of the amounts and composition of hazardous waste to be generated within the State in each of the next three years; - A determination of the number and type of new major hazardous waste facilities needed to treat, store, or dispose of hazardous waste in the State; - An analysis of the ability of all existing facilities to meet current and proposed State and Federal environmental, health and safety standards and their performance in meeting these standards; - An analysis of transportation routes and transportation costs from hazardous waste generators to existing or available suitable sites for major hazardous waste facilities; - Procedures to encourage codisposal of solid and hazardous waste, source reduction, materials recovery, energy recovery, waste exchanging and recycling and to discourage all inappropriate disposal techniques and to minimize the amount of hazardous waste to be treated, stored or disposed of in New Jersey; and - A regional analysis of existing and necessary major hazardous waste facilities and recommended procedures for coordinating major hazardous waste facilities planning on a regional basis. |

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| The Commission: duties relative to public hearings | PA PPA | <i>[13:1E-58c.(3); 13:1E-58d.]</i> | <p>! By December 9, 1981, set up, in consultation with NJDEP and the Council, a public information program that addresses:</p> <ul style="list-style-type: none"> - The nature and dimension of the hazardous waste problem; - The need for the proper and expeditious siting of new major hazardous waste facilities; - The respective responsibilities of the commission, department and council pursuant to this act; and - The necessity and opportunities for public participation as provided in the Act. <p>! By September 10, 1982, adopt the plan after consideration of any comments made at public hearings and after necessary changes to the plan have been made.</p> |
| The Commission: duties relative to site designation | PPA | <i>[13:1E-59a. & a.(1)]</i> | <p>! The Commission shall, in consultation with the Council, propose and adopt site designations for the number and type of new major hazardous waste facilities determined in the plan to be necessary.</p> <p>! By March 10, 1983 or within 6 months of receiving the siting criteria from NJDEP, whichever is sooner, the Commission must propose sites for new major hazardous waste facilities; transmit written notice thereof, by certified mail, to the governing body, board of health, planning board and environmental commission of the affected municipality; and provide the governing body with a grant, pursuant to <i>13:1E-59d.</i>, to conduct a site suitability study of the proposed site. If site is located in a county with a county health department, the county health department must also be notified.</p> |

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| The Commission: duties relative to the administrative law judge's recommendations, when the Commission chooses the site | PPA | [13:1E-59a.(5)] | <p>! Within 30 days of receiving the administrative law judge's recommendations, the Commission must affirm, conditionally affirm or reject the recommendations and adopt or withdraw the proposed site. Such action by the Commission is to be based upon the potential for significant impairment of the environment or the public health, is considered final agency action and is subject only to judicial review as provided by the Rules of Court.</p> <p>! If the Commission fails to act upon the recommendations of the administrative law judge as required in 13:1E-59a.(5), the failure is considered to be affirmance of those recommendations.</p> |
| The Commission: duties when an applicant proposes a site | PPA | 7:13A.6(a) &(b) | <p>! After adoption of the Siting Criteria for New Major Commercial Hazardous Waste Facility by NJDEP and the adoption of a Major Hazardous Waste Facilities Plan by the Commission, the Commission may accept for consideration proposals for alternate or additional site designations at the request of any hazardous waste industry.</p> <ul style="list-style-type: none"> - The requester has the burden of proof concerning suitability of the site with regard to any proceedings provided for in 7:26-13A.6. - The requester shall submit a written request for the site designation, a letter of intent to apply for registration and engineering design approval, a description of the nature of the proposed facility and a disclosure statement on a form supplied by the Commission. The form may be obtained from and shall be mailed, by certified mail, to the Commission and to the governing body of the effected municipality or municipalities and county. - The commission will acknowledge receipt of the request and disclosure statement and, at its discretion, require the requester to supplement the form with additional information which the commission reasonably deems necessary. |
| | PPA | 7:26G | <p>! Within 90 days of receiving a complete request for site designation, a letter of intent and a disclosure statement, the Commission will either:</p> |

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| The Commission: duties when an applicant proposes a site (continued) | PPA | 7:26G | <ul style="list-style-type: none"> - Deny the request in writing, without prejudice, upon determination by the Commission that the proposed site does not comply with the siting criteria and/or the proposed facility is not of the number and type determined in the Plan to be necessary, or - Transmit notice of the accepted request, by certified mail, to the requester, the governing body, board of health, planning board and environmental commission of the affected municipality or municipalities and to the governing body and any county health department of the affected county. In addition, the Commission must: <ul style="list-style-type: none"> a. Forward the letter of intent to NJDEP, b. Forward the disclosure statement to the Office of the Attorney General, and c. Publish, in a newspaper of general circulation in the affected jurisdiction, notice of the accepted request. <p>! Upon receiving notice of transmittal, the requester may, at its discretion, submit a Part A and Part B hazardous waste facility permit application and appropriate fees to NJDEP. The requester may also, at its discretion, authorize the Commission to prepare, at the requester's expense, an environmental and health impact statement, which meets the requirements 7:26-12.2, concerning the proposed site. Should the Commission arrange for preparation of the environmental and health impact statement by contract with a consultant, the requester shall be afforded the opportunity to:</p> <ul style="list-style-type: none"> - Consult with the commission and the department in the preparation of a request for proposals; and - Recommend consultants to be provided with a request for proposals. <p>In no way is the Commission's preparation of an environmental and health impact statement to be construed as an endorsement of the proposed site and/or facility by the Commission or NJDEP.</p> |

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| The Commission: duties/ actions relative to administrative law judge's recommendations, when an applicant proposes a site | PPA | 7:26G | <p>! Within 30 days of the receipt of the administrative law judge's recommendations, the Commission, whose membership shall be expanded by two members as provided in <i>13:1E-52c</i>, shall affirm, conditionally affirm, or reject the recommendations. Such action by the Commission shall:</p> <ul style="list-style-type: none"> - Be based upon the potential for significant impairment of the environment or the public health, and - Be considered to be final agency action thereon for the purposes of the Administrative Procedures Act and subject only to judicial review in the Appellate Division of the Superior Court pursuant to R.2-1. |
| | PPA | 7:26G | <p>! If the Commission fails to act upon the recommendations of the administrative law judge within 30 days, as required in 7:26-13A.6(i), the failure shall constitute Commission affirmance of those recommendations in accordance with the Uniform Administrative Procedures Rules of Practice, N.J.A.C. 1:1-1.</p> |
| | PPA | 7:26G | <p>! If the requester's proposed site is adopted by the Commission, the requester shall:</p> <ul style="list-style-type: none"> - Authorize, if it has not previously exercised its discretion to do so, the Commission to prepare an environmental and health impact statement; - Thereafter be considered an applicant and be bound by the procedures for the review of all applications for registration and engineering design approval for new major hazardous waste facilities as set forth in <i>13:1E-60</i> and the applicable NJDEP rules; and - Submit a Part A and Part B hazardous waste facility permit application in accordance with 7:26-12.1 and 12.2 and a fee in accordance with 7:26-4A. |
| The Commission: duties when an applicant proposes a site - repeal | PPA PA | 7:26G | The Commission may, upon its own motion or at the request of the governing body of any affected municipality, repeal or withdraw any adopted site for a facility if, in the discretion of the Commission, such action is consistent with the purposes of the Act. |

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| Governor duties | PPA PA | [13:1E-52(b)&(j)] | <p>! Appoints commission members</p> <p>! Reviews minutes from each Commission meeting within 10 working days</p> <ul style="list-style-type: none"> - If the Governor approves the minutes before the end of the 10-working-day period, the Commission-approved action takes effect upon the Governor's approval. - If the Governor does not take action by the end of the 10-working-day period after a meeting, the actions of the board go into effect. - If the Governor returns minutes within the 10-working-day period with a veto of any action taken by the board, the action shall be of no effect. |

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| Hazardous Waste Advisory Council (the Council): membership | PPA PA | [13:1E-54] | <p>! 17 members:</p> <ul style="list-style-type: none"> - State Auditor and the Director of Management and Budget serve as ex officio members - Other 15 members are appointed by the Governor with the advice and consent of Senate and serve terms of three years. <ol style="list-style-type: none"> 1. Three shall be appointed from persons recommended by recognized environmental or public interest organizations. 2. Two from persons recommended by recognized organizations of municipal elected and appointed officials. 3. Two from persons recommended by recognized organizations of county elected and appointed officials. 4. One from persons recommended by recognized community organizations. 5. One from persons recommended by recognized organizations of firefighters. 6. One from persons recommended by recognized organizations of industries which utilize on-site facilities for the treatment, storage, or disposal of hazardous waste. 7. One from persons recommended by recognized organizations of industries which utilize major hazardous waste facilities for the treatment, storage or disposal of hazardous waste. 8. One from persons recommended by recognized organizations of persons licensed by NJDEP to transport hazardous waste, or by individual licensed hazardous waste transporters. 9. One from persons recommended by recognized organizations of persons licensed by NJDEP to operate major hazardous waste facilities or by individual licensed major hazardous waste facility operators. 10. One person from the private sector with expertise in financial management of public funds. 11. One from persons in the academic community with expertise in program management evaluation techniques. |

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| The Council: duties and powers | PPA PA | [13:1E-55] | <p>Duties relating to siting</p> <p>! advises the Commission concerning:</p> <ul style="list-style-type: none"> - the preparation and adoption of the plan (the Facilities Plan), - the proposal and adoption by the Commission of all sites for major hazardous waste facilities, and - the implementation of the public information program. <p>! advises NJDEP concerning the preparation and adoption of criteria for the siting of new major hazardous waste facilities.</p> <p>! makes recommendations for NJDEP action on applications for the approval of registration and engineering designs for new major hazardous waste facilities.</p> |
| | PPA PA | [13:1E-56] | <p>Powers relating to siting</p> <p>! reviews any matter relating to the siting, licensing, construction, operation or closure of major hazardous waste facilities and transmits such recommendations to the Commission or to NJDEP as it deems appropriate.</p> <p>! holds public meetings or hearings within New Jersey on any matter relating to the siting of major hazardous waste facilities.</p> <p>! calls to its assistance and avails itself of the services of such employees of any State, county or municipal department, board, commission or agency as may be required and made available for such purposes.</p> |

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| LOCAL COMMUNITY NEEDS AND INVOLVEMENT | | | |
| LOCAL REVIEW/INVOLVEMENT | | | |
| Local review committee | PPA | "The Municipal Guide to Siting Hazardous Waste Facilities" | ! Local and regional officials have the discretion to organize a review committee within 45 days from notification by the Commission that a site for a major hazardous waste facility is under review. The review committee is the major contact between the local authorities and the Commission. The major task of the committee is to coordinate the Municipal Site Suitability Study (MSSS). The composition of the committee is solely at the discretion of the local officials organizing it. |

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| Municipal suitability study: when the Commission chooses the site | PPA | [13:1E-59a.(2); 13:1E-59e.]; "The Municipal Guide to Siting Hazardous Waste Facilities" | <p>! Within 45 days of notice that a site is being considered, for a major hazardous waste facility, in a municipality/county, a grant is given to the municipality by the Commission to conduct a Municipal Site Suitability study (MSSS). Within 6 months of the receipt of the grant, the governing body of the affected municipality shall complete and transmit to the Commission the site suitability study on the proposed site. (Note the "45 days of notice" was not in the Act. This information was obtained from "The Municipal Guide to Siting Hazardous Waste Facilities" by the New Jersey Hazardous Waste Facilities Siting Commission. Other information obtained from this brochure:</p> <ul style="list-style-type: none"> - The purpose of the MSSS is to evaluate the proposed site against the siting criteria and to independently review the conclusions reached by those proposing a specific site for a major hazardous waste management facility. The Commission will not fund studies that do not address the criteria or the site. In particular, attorney fees are not covered under the grant. To address questions outside the siting criteria, local officials must seek additional funding. - The Commission has no standard outline for the MSSS because environmental conditions and relevant criteria vary from site to site. Instead, the local review commission and the Commission meet to discuss a proposed outline and once the Commission approves the outline, the municipality will be awarded the grant to conduct the MSSS. - The Commission attempts to share all information on the site and the relevant criteria with the local review committee. - The Commission hopes with local assistance to judge as accurately as possible whether a proposed site meets the siting criteria. - The review commission must petition the Commission if more than 6 months are needed to complete the MSSS.) <p>! If a site is located within more than one municipality, notice is given to all affected municipalities. The grant for the MSSS is awarded to all of the affected municipalities and the study is conducted jointly.</p> |

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| Municipality Site Suitability Study: when an applicant chooses a site | PPA | 7:26G; "The Municipal Guide to Siting Hazardous Waste Facilities" | Same procedure as when the site is chosen by the Commission. |
| Municipality's review of the proposed facility's engineering design | PPA PA | [13:1E-60c.(4)] | Within 6 months of receipt of notice that application for registration and engineering design approval will be submitted, the affected municipality must conduct and transmit to NJDEP a review of the proposed facility and operator, including a site plan review conducted in the manner approved by the "Municipal Land Use Law". The cost of the municipal review shall be borne by the applicant and not exceed \$15,000. In preparing this review, the municipality may request and receive any reasonable and relevant information from the applicant or NJDEP. |
| OTHER AGENCY OR GOVERNMENTAL ENTITY INVOLVEMENT | | | |
| Not directly addressed | | | |
| COMPATIBILITY OF FACILITY SITE WITH LOCAL SOLID WASTE MANAGEMENT PLANS | | | |
| Not directly addressed | | | |
| IMPACT OF FACILITY ON LOCAL LAND USE | | | |
| Review of site plan by municipality | PPA PA | [13:1E-60c.(4)] | The registration statement and engineering design for a proposed major hazardous waste facility must be reviewed by the municipality. As part of this, a site plan review must be conducted in the manner provided by the Municipal Land Use Law P.L. 1975, c. 291 (C. 40:55D-1). |

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| PUBLIC PARTICIPATION | | | |
| The federal regulations regarding the public participation process for the permitting of hazardous waste (RCRA) facilities can be viewed at http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf within the Part 124 Procedures for Decisionmaking. (State regulations cannot be less stringent than the federal counterparts.) | | | |
| NOTIFICATION | | | |
| Major hazardous waste plan | PPA | <i>[13:1E-58c.(2)];</i> | Notice of the public hearings associated with this plan must be published at least 30 days in advance and in at least two newspapers circulating in the geographic area where the hearing will be held. The Commission also allows 45 days for public comment. Each time the plan is updated, notice is given in the New Jersey Register. The Executive Summary is also published in the New Jersey Register. At the end of the period, comments are given to the Commission and public hearings are held. |
| Designation of a major hazardous waste facility site at the request of an applicant | PPA | 7:26G | ! If the Commission chooses to accept for further consideration a siting request made by any hazardous waste industry, it must: <ul style="list-style-type: none"> - transmit notice of the accepted request, by certified mail, to the governing body, board of health, planning board and environmental commission of the affected municipality or municipalities and to the governing body and any county health department of the affected county, and - publish, in a newspaper of general circulation in the affected jurisdiction, notice of the accepted request. |
| | PPA | 7:26G | ! Upon receipt of the Municipality Site Suitability Studies, or upon the completion of the time period for such studies, whichever is sooner, the Commission shall publish, in a newspaper of general circulation in the affected jurisdiction, a notice of the scheduling of an adjudicatory hearing to consider the proposed site. |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|--|--------------------|---|--|
| Registration and Engineering Design Approval | PA | <p><i>[13:1E-60c.(1)]</i></p> <p><i>[13:1E-60c.(3)]</i></p> <p><i>[13:1E-60c.(6)]</i></p> | <p>New Major Hazardous Waste Facilities and Expansions to Such Facilities of 50% or greater:</p> <p>! Not less than 90 days prior to filing an application for registration and engineering and design approval, the applicant shall submit to NJDEP and the governing body of the affected municipality a letter of intent to apply for registration and engineering design approval and a brief description of the nature of the proposed facility.</p> <p>! NJDEP shall transmit, by certified mail, a completed copy of any application submitted pursuant to <i>13:1E-60c.</i> to the governing body, board of health, planning board and environmental commission of the affected community.</p> <p>! When NJDEP has made its tentative approval, it must transmit the approval to the applicant and to the affected municipality. It must be accompanied by a fact sheet setting forth the principal facts and the significant factual, legal, methodological, and policy questions considered in granting the tentative approval, including:</p> <ul style="list-style-type: none"> - A description of the type of facility or activity that is the subject of the tentative approval, - The types and quantities of wastes that are proposed to be treated, stored or disposed of at the proposed facility, - A brief summary of the basis for the conditions of the tentative approval, - The environmental and health impact statement prepared for the proposed facility, - A summary as to how the statement demonstrates that the proposed facility, subject to such conditions as may have been imposed, would not create a significant adverse impact upon the public health or the environment, and - In the event that the granting of the tentative approval is contrary to the findings of the municipal review of the application, NJDEP's reasons for the rejection of those findings. |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|---|--------------------|-----------------------------|--|
| Notices for other than major hazardous waste facilities and for major waste facilities when the Siting Act requirements no longer apply | PA | 40 CFR 124 | ! Public notice of the preparation of a draft permit , including notice of intent to deny, must allow at least 45 days for public comment. |
| | | 40 CFR 124 | ! Public notice of a public hearing must be given at least 30 days before the hearing and may be combined with public notice of a draft permit. The public hearing shall be held within 45 days of the date of issuance of the draft permit. |
| | | 40 CFR 124 | ! Public notice of the above activities must be given by the following methods: - by mailing a copy of a notice to the following persons: a. the applicant; b. the EPA; c. Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities; d. the Board of Freeholders of the County in which the facility is or is proposed to be located; and e. the municipality(ies) where the facility is or is proposed to be located; f. persons on the mailing list developed as indicated at 7:26-12.12(e)1.vi(1)-(3) - by notice in a daily or weekly newspaper within the area affected by the facility in a manner constituting a legal notice under State law and by broadcast over a local radio station. - by any other method reasonably calculated to give actual notice of the action in question to persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|---|--------------------|-----------------------------|---|
| Notices for other than major hazardous waste facilities and for major waste facilities when the Siting Act requirements no longer apply (continued) | | 40 CFR 124 | <p>! All public notices issued under this section must contain the following minimum information:</p> <ul style="list-style-type: none"> - Name and address of the office processing the permit action for which notice is being given; - Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit; - A brief description of the business conducted at the facility or activity described in the permit application; - Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit statement of basis or fact sheet, and the application; - A brief description of the procedures required as for public comments, requesting a public hearing, and holding a public hearing; and - Reference to the date of previous public notices relating to the permit. |
| PUBLIC MEETINGS | | | |
| Not specifically addressed | | | |
| PUBLIC HEARINGS | | | |
| First major hazardous waste facilities plan | PPA | [13:1E-58c.] | <p>! By March 10, 1982, the Commission must have prepared and made available to all interested persons a proposed plan.</p> <p>! By May 10, 1982, the Commission must have conducted public hearings in several geographic areas.</p> <p>! By September 10, 1982, the Commission must have considered any comments made at the public hearings, made such revisions to the proposed plan as was deemed necessary or appropriate, and adopted the plan.</p> <p>! Each time the plan is updated, three public hearings are held. After the public hearing, two weeks are allowed for written comments.</p> |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|---|--------------------|-----------------------------|---|
| Exemption of a facility from the Siting Act | PA | [13:1E-60e.] | NJDEP must hold a public hearing if it is considering a request from the owner or operator to exempt a major hazardous waste facility from the Siting Act. |
| Public comments for new other than major hazardous waste facilities | PA | 40 CFR 124 | During the comment period for the draft permit, including notice of intent to deny, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing. All comments must be considered in making the final decision and must be answered. |
| Public hearings for new facilities, other than major hazardous waste facilities | PA PDP | 40 CFR 124 | <p>! NJDEP must hold a public hearing:</p> <ul style="list-style-type: none"> - On every draft permit for a new hazardous waste facility; - on any draft permit modification or revocation and reissuance which would result in an increase of 50 % in the capacity of an existing facility to treat, store or dispose of hazardous waste; - Whenever, NJDEP finds, on the basis of requests, a significant degree of interest in a draft permit; - Whenever, in NJDEP's discretion, such a hearing might clarify one or more issues involved in the permit decision; or - Whenever NJDEP receives written notice of opposition to a draft permit and a request for hearing within 45 days of public notice. |
| | | 40 CFR 124 | <p>! Any person may submit oral or written statements and data concerning the draft permit at a public hearing. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period is automatically extended to the close of any public hearing. The hearing officer may also extend the comment period by so stating at the hearing.</p> |
| | | 40 CFR 124 | <p>! The permit applicant must appear at the public hearing and be available to answer questions regarding the proposed facility or expansion. Failure to appear may result in denial of the application. If a response cannot be given at the hearing, a written response will be prepared by NJDEP or the applicant after the hearing.</p> |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|--|--------------------|---|--|
| Public hearings for new other than major hazardous waste facilities (continued) | | 40 CFR 124 | <p>! A tape recording or written transcript of each public hearing must be made available to the public.</p> <p>! NJDEP must respond to all comments and this response must be made available to the public.</p> |
| ADJUDICATORY HEARINGS | | | |
| Adjudicatory hearing/ administrative law judge: when the Commission chooses the site | PPA | <i>[13:1E-59a.(3)&(4) & e.]</i> | <p>! Within 45 days of receipt by the Commission of the Municipal Site Suitability Study (MSSS), an adjudicatory hearing concerning the proposed site is to be conducted by an administrative law judge. The affected municipality is a party of interest to such hearing and has the right to present testimony and cross-examine witnesses. Intervention in the hearing by any other person is as provided by the "Administrative Procedures Act." When more than one municipality is affected, all municipalities are considered a single party for the purposes of the adjudicatory hearing held pursuant to <i>13.1E-59</i>.</p> <p>! Within 30 days of the close of the adjudicatory hearing, the administrative law judge must transmit his recommendations for action on the proposed site to the Commission. The judge cannot favorably recommend the proposed site as suitable for a major hazardous waste facility unless he finds clear and convincing evidence that locating a major hazardous waste facility on the proposed site will not constitute a substantial detriment to the public health, safety and welfare of the affected municipality.</p> |
| Adjudicatory hearing/ administrative law judge: when an applicant chooses a site | PPA | 7:26G | <p>! Same as the procedures when the Commission chooses the site except that the statement starting "The judge cannot favorably recommend the proposed site as suitable..." is not included.</p> |

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New Jersey Hazardous Waste Facility Siting Provisions

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|---|--------------------|-----------------------------|---|
| Adjudicatory hearing/ administrative law judge: tentative approval of registration statement and engineering design | PA | [13:1E-60c.(7)&(8)] | <p>! Within 45 days of the granting of a tentative approval of an application containing the registration statement and the engineering design, an adjudicatory hearing on the proposed facility and operator shall be conducted by an administrative law judge. The affected municipality shall be a party of interest to such hearing and has the right to present testimony and cross-examine witnesses. Intervention by any other person shall be as provided in the Administrative Procedures Act.</p> <p>! Within 30 days of the close of such hearing, the administrative law judge shall transmit his recommendations for action on the application to NJDEP. The judge shall not recommend approval of the application unless he finds clear and convincing evidence that:</p> <ul style="list-style-type: none"> - The disclosure statement and application for a registration statement establish that the owner and operator of the proposed facility possesses sufficient financial resources to construct, operate, and guarantee maintenance and closure of the facility, and - The facility will not constitute a substantial detriment to the public health, safety, and welfare of the affected municipality. |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|--|--------------------|------------------------------|--|
| SITING RESTRICTIONS AND PROHIBITIONS | | | |
| Federal siting restrictions and prohibitions can be viewed at http://www.epa.gov/epacfr40/chapt-I.info/subch-I/ by selecting “Part 264 (Updated 1997) - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”. The regulatory requirements are in Location Standards at 264.18 in the document. (State regulations cannot be less stringent than the federal counterparts.) | | | |
| SOIL AND WATER | | | |
| Subsurface requirements | | 7:26G <i>[13:1E-57a.]</i> | <p>New major hazardous waste facilities</p> <p>! Facilities other than land emplacement or impoundment types cannot be placed in:</p> <ul style="list-style-type: none"> - areas underlain by cavernous limestone, cavernous dolomite, or cavernous marble, or - areas overlying subsurface mining activities, past or present, unless the applicant can demonstrate to the satisfaction of NJDEP that the facility design fully compensates for the risk of surface subsidence. <p>! Land emplacement or impoundment type facilities cannot be placed in:</p> <ul style="list-style-type: none"> - areas underlain by limestone, dolomite or marble; or - areas overlying past or present subsurface mining activities. |
| Surface water protection | | 7:26G <i>[13:1E-57a]</i> | <p>New major hazardous waste facility cannot be sited within:</p> <p>! The upstream portion of the watershed draining to an on-stream reservoir.</p> <p>! Those watershed areas that drain directly into an off-stream reservoir.</p> <p>! The watersheds for water classified by the NJDEP as FW-1 or FW-2 Trout Production Waters in the Surface Water Quality Standards.</p> |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|-------------------------|--------------------|--|--|
| Ground water protection | | 7:26G <i>[13:1E-57a & a. (4)]</i> | <p>All new major hazardous waste facilities:</p> <p>! may be located only in areas where:</p> <ul style="list-style-type: none"> - prior to facility construction, the flow of ground water in the uppermost saturated unit is predominantly parallel to or upwards toward the water table, and - the predominant ground water flow direction is toward a nearby surface water body without any intermediate withdrawals from the uppermost saturated zone for public or private water supply and there is no significant recharge to deep aquifers <p>! are prohibited in areas where the depth to the seasonally high water table in the uppermost saturated unit will rise to within one foot of the ground surface.</p> <p>Land emplacement and impoundment type facilities that are new major hazardous waste facilities are prohibited in the following areas:</p> <p>! in areas where the ground water travel time within the uppermost saturated unit from the outermost edge of the containment structure to the site boundary or to a surface water body or wetland within the site boundary is less than 10 years;</p> <p>! in areas within one mile of a water supply well or well field producing over 100,000 gallons per day, unless it can be demonstrated to the satisfaction of NJDEP or the Commission, as appropriate, that natural hydrologic barriers isolate the site from the aquifer being pumped;</p> <p>! in the case of partially in-ground facilities, in areas where, prior to facility construction, the depth to the seasonally high water table in the uppermost saturated unit will rise to within 5 feet of the bottom of the containment structure; and</p> <p>! in the case of wholly aboveground facilities, in areas where, prior to facility construction, the depth to the seasonally high water table in the uppermost saturated unit will rise to within one foot of the ground surface.</p> |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|---|--------------------|---------------------------------|---|
| SEISMIC CONSIDERATIONS | | | |
| Not specifically addressed | | | |
| RUN-ON/RUN-OFF, FLOODING AND EROSION | | | |
| Riverine Flooding Restrictions | PPA | 7:26G <i>[13:1E-57a.(2)]</i> | ! New major hazardous waste facilities cannot be located in a riverine flood hazard area delineated by NJDEP pursuant to the State Flood Hazard Area Control Act or the 100-year flood hazard area identified under flood insurance studies prepared for FEMA, or in other areas shown to be within the area subject to inundation by the 100-year design flood of a nondelineated stream. |
| | PA | 40 CFR 264.18(b) | ! All new hazardous waste facilities , if located in a 100-year floodplain, must be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood unless the owner or operator can demonstrate to NJDEP that procedures are in effect that will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters. |
| Coastal Flooding Restrictions | | 7:26G <i>[13:1E-57a.(2)]</i> | New major hazardous waste facilities: ! Facilities other than land emplacement or impoundment types cannot be placed in a coastal flood hazard area identified by FEMA or delineated by NJDEP or, if not delineated, at elevations less than 12 feet above mean sea level in the coastal flood plain, unless it can be demonstrated to the satisfaction of NJDEP that the facility design will prevent the physical transport of any hazardous waste by the 100-year coastal flood event. ! Land emplacement or impoundment type facilities cannot be placed in a coastal hazard area identified by FEMA or delineated by NJDEP or, if not delineated, at elevations less than 12 feet above mean sea level in the coastal flood plain. |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|-------------------------------|--------------------|------------------------------|--|
| AIR | | | |
| Air Quality Area restrictions | | 7:26G <i>[13:1E-57a.]</i> | New major hazardous waste facilities shall not be located within 6.25 miles (10 kilometers) of any mandatory Federal Class 1 Prevention of Significant Deterioration of Air Quality area. |
| Protection of Air Quality | | 7:26G <i>[13:1E-57a.]</i> | <p>New major hazardous waste facilities shall not be located in nonattainment areas unless the facility demonstrates that emission offsets will be obtained prior to operation, pursuant to the requirements of NJDEP air pollution control regulations, subject to the following more stringent requirements:</p> <ul style="list-style-type: none"> ! The annual significant emission increase for volatile organic substances shall be 10 tons per year; ! The annual significant emission increase for total suspended particulate matter shall be 25 tons per year; ! The minimum offset ratio as required by Table 2 in 7:27-18.4(b) for volatile organic substances (VOS) shall be 2:1 and the offsets shall be obtained at a distance not to exceed 50 miles from the proposed new facility; and ! The minimum offset ratio as required by Table 2 in 7:27-18.4(b) for total suspended particulate matter (TSP) shall be 1.0:1 for a distance of TSP offset from the facility of 0-.5 miles, 1.5:1 for 0.5-1.0 miles, and 2.01:1 for 1.0-2.0 miles. |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|--|--------------------|--|--|
| DISTANCE LIMITATIONS/BUFFER ZONES | | | |
| Distance of facility from other structures/areas | | 7:26G <i>[13:1E-57a. (1)&(5)]</i> 7:26-13:10(a)(6) | <p>For new major hazardous waste facilities:</p> <p>! land emplacement or impoundment type facilities must be</p> <ul style="list-style-type: none"> - more than 2,000 feet from any structure that is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day. - more than one mile from a water supply well or well field producing over 100,000 gallons per day, unless it can be demonstrated to the satisfaction of NJDEP or the Commission, as appropriate, that natural hydrologic barriers isolate the site from the aquifer being pumped. <p>! facilities other than land emplacement or impoundment types must be more than half a mile from any structure that is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day.</p> <p>! no facility may be within</p> <ul style="list-style-type: none"> - a 20-mile radius of a nuclear fission plant at which spent nuclear fuel rods are stored on-site. - 6.25 miles (10 kilometers) of any mandatory Federal Class 1 Prevention of Significant Deterioration of Air Quality area. |

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New Jersey Hazardous Waste Facility Siting Provisions

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|--|--------------------|---------------------------------|--|
| OTHER HUMAN HEALTH CONSIDERATIONS | | | |
| Considerations of Human Health | | 7:26G <i>[13:1E-57a.]</i> | <p>No new major hazardous waste facility shall be sited in any area so as to cause an unreasonable risk of harm to the health, safety and welfare to the population. Factors considered:</p> <ul style="list-style-type: none"> ! density of population in proximity to the facility; ! size and type of the facility; ! type of waste expected to be present at the facility; ! the transportation means and routes available to evacuate the population at risk in a maximum credible accident, including both spills and fires; ! the size and types of other hazardous waste facilities and facilities that handle hazardous materials in the adjacent area; and ! the availability of fire, police, and other emergency management personnel and medical facilities in the area. |
| ENVIRONMENTALLY SENSITIVE AREAS | | | |
| Endangered Species | | 7:26G <i>[13:1E-57]</i> | New major hazardous waste facilities shall not be sited in areas where the placement of the facility would adversely affect a habitat of an endangered species as defined by the New Jersey Endangered and Non-game Species Conservation Act or the Federal Endangered Species Act, unless a habitat adequate to assure the survival of the species with the region surrounding or on the site is preserved. These areas preserved as habitats shall be appropriately managed in accordance with a plan approved by the Endangered and Non-Game Species Project within the Division of Fish, Game and Wildlife. |
| Critical Habitat | | 7:26G <i>[13:1E-57]</i> | No new major hazardous waste facility shall be sited in the Pinelands Area as established by N.J.S.A. <i>13:18A-11a</i> of the Pinelands Protection Act, N.J.S.A. <i>13:18A-1 et seq.</i> |
| Wetlands | | 7:26G <i>[13:1E-57a.(3)]</i> | No new major hazardous waste facilities shall be sited in or on wetlands inundated by surface or ground water with frequency to support, under normal circumstances, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. |

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| Topic | Stage ¹ | State citation ² | Provision |
|---------------------------------------|--------------------|-----------------------------|--|
| Wild, Scenic, and Recreational Rivers | | 7:26G <i>[13:1E-57]</i> | New major hazardous waste facilities shall not be sited in areas designated as wild, scenic, recreational or developed recreational rivers, pursuant to the National Wild and Scenic Rivers Act or the New Jersey Wild and Scenic River Act. |
| Approved Farmland Preservation Areas | | 7:26G <i>[13:1E-57]</i> | New major hazardous waste facilities shall not be sited on lands in municipally approved farmland preservation programs or on lands that have been dedicated to agricultural use by the purchase of their development rights pursuant to the provisions of the Agricultural Retention and Development Act or equivalent independent county/municipal programs, provided that such designation and dedication was officially adopted by municipal ordinance and the development rights have been purchased at least six months prior to the Commission's proposing the site or an applicant submitting to the Department and the municipality a letter stating the intention to apply for registration and engineering design approval. |
| OTHER RESTRICTIONS | | | |
| Ensuring safe transportation | | 7:26G <i>[13:1E-57]</i> | <p>For new major hazardous waste facilities:</p> <p>! NJDEP and the Commission should consider requiring private, direct access roads to the facility from Interstate, State or county highways or other roads that are well-maintained, well-constructed, free of obstructions and with a good degree of visibility.</p> <p>! No hazardous waste shall be transported on roads where weight restrictions for the road or any bridge on the road will be exceeded in the selected route of travel, unless engineering upgrades, undertaken and financed by the facility operators, are provided which conform to all appropriate Federal, State, county and local laws and regulations.</p> |

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New Jersey Hazardous Waste Facility Siting Provisions

| Topic | Stage ¹ | State citation ² | Provision |
|---|--------------------|-----------------------------|-----------|
| ENVIRONMENTAL JUSTICE CONSIDERATIONS | | | |
| Not directly addressed | | | |
| ECONOMIC CRITERIA | | | |
| Not directly addressed | | | |
| OTHER CRITERIA | | | |
| Not directly addressed | | | |

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